

**DONOVAN HATEM LLP**

*counselors at law*

Nancy M. Reimer  
617 406 4521 direct  
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December 13, 2005

**VIA FACSIMILE &  
FIRST CLASS MAIL**

John A.K. Grunert, Esq.  
Campbell Campbell Edwards & Conroy  
One Constitution Plaza, Third Floor  
Boston, MA 02129

**Re: Trans-Spec Truck Service, Inc. d/b/a/ Truck Service v. Caterpillar Inc.  
Civil Action No. 04-11836-RCL**

Dear John:

I understand Trans-Spec's expert Thomas Service was served with a deposition subpoena for December 27, 2005. Apparently, you did not see Mr. Samito's December 9, 2005 letter to you (a copy of the letter is attached) informing you that both of Trans-Spec's experts, Dr. Service and Dr. Ekchian will be available for deposition without the need of subpoena. In addition, Mr. Samito informed you that neither expert is available on the dates you proposed (on December 27, 2005 Dr. Service will in be in New York). Mr. Samito further stated he will provide you with dates for the depositions during January 2006. Mr. Service is available for deposition from January 17, 2006 through February 2, 2006.

Please let me know whether you agree to take Dr. Service's deposition on one of the proposed dates in January 2006 or if I will need to seek a protective order from the court.

Very truly yours,

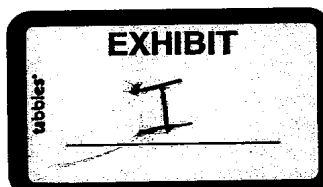
  
Nancy M. Reimer

NMR/mm  
Enclosure

cc:

  
Kevin Kenneally, Esq.

00965498



**DONOVAN HATEM LLP**

*counselors at law*

Christian G. Samito  
617 406 4592 direct  
[CSamito@donovanhatem.com](mailto:CSamito@donovanhatem.com)

December 9, 2005

**BY FACSIMILE AND FIRST CLASS MAIL**

John A.K. Grunert, Esq.  
Campbell Campbell Edwards & Conroy  
One Constitution Plaza, Third Floor  
Boston, MA 02129

**Re: Trans-Spec Truck Service, Inc. d/b/a/ Truck Service v. Caterpillar Inc.**  
**Civil Action No. 04-11836-RCL**

Dear Attorney Grunert:

I am in receipt of your December 9, 2005 letter and attached notices of taking depositions. I do not know why you threaten to subpoena Dr. Service and Dr. Ekchian but that is not relevant; both will be available for deposition. Neither are available on the dates you proposed but I have asked them to provide me with possible deposition dates in January. I will get back to you when I have those prospective dates.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Christian G. Samito

cc: Nancy M. Reimer, Esq. ✓  
Kevin Kenneally, Esq.

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TEL: (617) 241 3000  
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December 13, 2005

Nancy Reimer, Esquire  
Donovan Hatem, LLP  
Two Seaport Lane  
Boston, MA 02210

RE: Trans-Spec Truck Service, Inc. v. Caterpillar Inc.  
United States District Court Civil Action No. 04-11836-RCL

Dear Ms. Reimer:

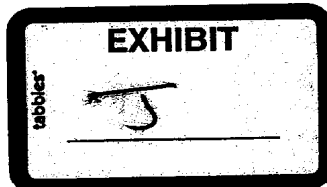
I have your fax of this date. I did indeed see Mr. Samito's December 9 letter, but did not receive from him any proposed deposition dates. Mr. Samito often neglects to do what he says he will do, or at least has often neglected to do so over the course of this case, so I did not think I could rely on his promise.

January 17 is far too late for Mr. Service's deposition. Caterpillar's expert reports are due January 13 and I need to depose both of your proposed experts well before then. You have known for a long time that Messrs. Service and Ekchian would have to appear for deposition. You should have supplied me with proposed dates when you served their reports at the end of the day on December 7. My belief is that you are now attempting to delay their depositions exclusively for the purpose of obtaining unfair tactical advantage.

If Mr. Service is unavailable on December 27, we can move Mr. Ekchian's deposition to that date and I will depose Mr. Service on the 29th. I will also consider other dates during that week, or even early the following week. Please make me a proposal.

Very truly yours,

  
John A. K. Grunert



**DONOVAN HATEM LLP**  
*counselors at law*

Christian G. Samito  
617 406 4592 direct  
CSamito@donovanhatem.com

December 14, 2005

**BY FACSIMILE AND FIRST CLASS MAIL**

John A.K. Grunert, Esq.  
Campbell Campbell Edwards & Conroy  
One Constitution Plaza  
Third Floor  
Boston, MA 02129

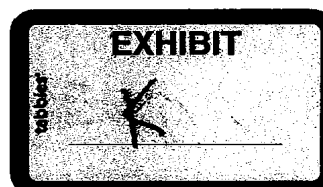
**Re: Trans-Spec Truck Service, Inc. d/b/a/ Truck Service v. Caterpillar Inc.**  
**Civil Action No. 04-11836-RCL**

Dear Attorney Grunert:

I am writing to you pursuant to Local Rule 37.1 and in response to your December 13, 2005 letter. You did not receive any proposed deposition dates on December 9, 2005 because, as I indicated in my letter of that date, we needed to confer with Dr. Ekchian and Dr. Service regarding their availability. I see that Ms. Reimer provided you with dates for Dr. Service's deposition in a letter that she sent you yesterday. I will send you Dr. Ekchian's proposed dates as soon as I have them.

I understand that you subsequently served both Dr. Service and Dr. Ekchian with subpoenas. As I informed you in my December 9, 2005 letter, neither Dr. Service nor Dr. Ekchian are available on either December 27 or 29, 2005 because both are traveling that week.

On what basis do you demand deposing Dr. Ekchian and Dr. Service before Caterpillar's expert reports are due? Nowhere do the Federal Rules mandate that a plaintiff's expert must be deposed prior to the defendant's submission of expert reports. Moreover, Judge Lindsay's original Scheduling Order dated October 27, 2004 included an approximately two month window following Caterpillar's expert disclosure for the taking of expert depositions. The *Assented To Motion to Amend Scheduling Order* dated October 7, 2005 ("Motion to Amend"), included a two month window after the serving of Caterpillar's expert reports for the deposing of experts. Judge Lindsay's October 26, 2005 Order on the Motion to Amend included a period slightly longer than a month in which to depose experts. Neither the Court's Orders nor the Motion to Amend, to which you assented, afford Caterpillar the right to depose Trans-Spec's experts prior to serving its own expert reports.



Please let me know in writing by noon tomorrow whether you agree to withdraw your subpoenas of Dr. Service and Dr. Ekchian. We can then discuss appropriate dates for their depositions in the second half of January. If you refuse to withdraw both depositions, I will have no choice but to file a Motion for Protective Order. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Chris G. Samito', with a stylized flourish at the end.

Christian G. Samito

cc: Nancy M. Reimer, Esq. ✓  
Kevin Kenneally, Esq.

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15/2005 13:05 FAX 617 241 5115

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BY FAX

December 15, 2005

Christian Samito, Esquire  
Donovan Hatem, LLP  
World Trade Center East  
Two Seaport Lane  
Boston, MA 02210

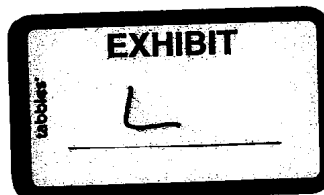
RE: Trans-Spec Truck Service, Inc. v. Caterpillar Inc.  
United States District Court Civil Action No. 04-11836-RCL

Dear Mr. Samito:

I do not agree to withdraw the subpoenas to Messrs. Service and Ekchian. As indicated in my letter to Ms. Reimer, I am willing to discuss rescheduling one or both of those depositions for the first week in January if one or both of the witnesses is really unavailable during the last week in December. I am not willing to reschedule the depositions for dates you select based exclusively on your view of where Trans-Spec's tactical interests lie. Nor, in light of experience, am I willing to rely on representations you make. The witnesses are under subpoena and will remain so. If we agree on different dates, I will expect your office to accept service of amended subpoenas requiring their appearance on those dates.

Very truly yours,

John A. K. Grunert



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
TRANS-SPEC TRUCK SERVICE, INC.  
d/b/a TRUCK SERVICE,

Plaintiff

vs.

CATERPILLAR INC.

Defendant

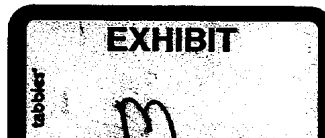
CIVIL ACTION NO. 04-11836-RCL

**ASSENTED TO MOTION TO AMEND SCHEDULING ORDER**

The plaintiff Trans-Spec Truck Service, Inc. d/b/a Truck Service ("Trans-Spec") respectfully submits this Assented To Motion to Amend Scheduling Order. As grounds, Trans-Spec states that the unavailability of the deposition transcripts of Caterpillar Inc.'s ("Caterpillar") Rule 30(b)(6) designees to date and the extensive nature of the testing that must be conducted on several flywheel houses that are the subject of this lawsuit makes it virtually impossible for expert reports to be submitted within the present discovery period.

Accordingly, Trans-Spec moves the Court to amend its August 16, 2005 Scheduling Order as follows: (a) no change is necessary as to the deadline, which has expired, for non-expert discovery<sup>1</sup>; (b) change the deadline for Trans-Spec's expert reports from October 27, 2005 to December 27, 2005; (c) change the deadline for Caterpillar's expert reports from November 23, 2005 to January 23, 2005; (d) change the date for completion of depositions of experts from

<sup>1</sup> Caterpillar has requested Trans-Spec to produce one of the Sterling trucks involved in this case for inspection and testing but such testing and inspection has not yet occurred. By assenting to this motion, Caterpillar does not waive its right to conduct such inspection and testing or to bring any motions or issue any subpoenas that may be necessary to enable it to accomplish the inspection and testing.

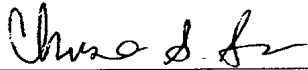


January 23, 2006 to March 23, 2006; (e) change the date for filing dispositive motions from February 27, 2006 to April 27, 2006.

Respectfully submitted,

TRANS-SPEC TRUCK SERVICE, INC.  
By its attorneys,

DONOVAN HATEM, LLP

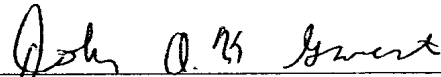



Christian G. Samito (BBO: 639825)  
2 Seaport Lane  
Boston, MA 02210  
(617) 406-4500

Date: October 7, 2005  
00950627

Assented to: CATERPILLAR INC.  
By its attorneys,

CAMPBELL CAMPBELL EDWARDS  
& CONROY, P.C.



John A. K. Grunert (BBO: 213820)   
One Constitution Plaza  
Boston, MA 02129  
(617) 241-3000

Date: October 7, 2005